

BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C. 20554

In re Matter of

Amendment of Section 73.202(b)

Table of Allotments

FM Broadcast Stations,

Hazlehurst, Mississippi

)
) MM Docket No. 94-2
) RM No. 8415
)
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TO: Chief, Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

OPPOSITION TO MOTION TO ACCEPT LATE FILED COMMENTS

Douglas B. DeLawder ("DeLawder"), by his attorneys and pursuant to Commission Rule 1.45, hereby opposes the Motion To Accept Late Filed Comments ("Motion") submitted in the captioned proceeding on April 7, 1994 on behalf of PDB Broadcasting ("PDB"), the proponent of the allocation under consideration herein.

I. Background

1. In response to a Petition for Rule Making filed by PDB, the Mass Media Bureau issued the Notice of Proposed Rule Making ("NPRM") herein on February 8, 1994. The NPRM required that comments be filed on or before April 1, 1994. Due to the "press of other business", counsel for PDB "inadvertently failed" to file comments by the due date.

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2. DeLawder timely filed a counter-proposal urging that Channel 282A be allocated to Bude, Mississippi, rather than Hazlehurst as proposed herein.

II. COMMISSION RULE 1.46

3. Commission Rule 1.46(a) specifies that "... extensions of time shall not be routinely granted." Rule 1.46(b) provides that motions for extension of time to file comments in rule making proceedings must be filed ". . . at least 7 days before the filing date." The importance which the Commission attaches to this advance filing requirement is well illustrated by the limited nature of the one exception to it;

In emergency situations, the Commission will consider a late filed motion for a brief extension of time related to the duration of the emergency . . .

Here, PDB did not file its Motion until after the deadline for filing comments. It appears from PDB's Motion that its counsel simply forgot the April 1 filing deadline until it was reminded of the deadline by DeLawder's service of a copy of his counter-proposal upon counsel for PDB (see Motion, footnote 1).

III. APPLICABLE PRECEDENT

4. The Commission has in recent years become ever more vigorous in its enforcement of Rule 1.46. In FM Channel Assignments, Julian, California, 57 RR 2d 1325 (1985), the Commission affirmed a staff action denying a requested one-day extension of time in an FM allocation proceeding. The facts in

that proceeding appear to be virtually identical to facts here -- except that in Julian, the comments were tendered one day late rather than six days late as was the case here.

5. The following excerpts from the Julian decision are directly applicable here:

Imperial's request for an extension of time does not comply with the criteria set forth in our rules. . . . It did not comply with the seven day filing requirement and presented us with no indication of any emergency situation which would have convinced us to waive this rule.

Imperial also contends that no party would have been harmed by the grant of its requested extension. We disagree. Any other interested party would be operating under the assumption that the original deadline would stand since no extension request had been filed seven days prior to the comment deadline. If we had granted Imperial's last-minute request, these parties would have been deprived of the extra time granted to Imperial since they would have already filed.

6. The Julian decision is consistent with a number of other Commission actions and policy statements involving both rule making and other proceedings in the broadcast and other radio services. For example, a Public Notice issued by the Common Carrier Bureau on September 5, 1978 provides illustrations of facts which would and would not demonstrate good cause for extensions of time. That Public Notice establishes very stringent criteria for the granting of extensions of time. For example, it specifies that the press of other work of counsel -- even including conflicting litigation commitments -- does not constitute good cause for an extension of time.

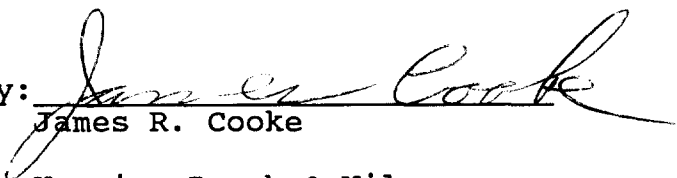
7. Filing deadlines were also strictly enforced in Tel-Page Corp., 42 RR 2d 127 (1978) where an extension of time was denied by the Commission's General Counsel. In that case, the request for extension was premised upon not only the other commitments of counsel but also the relocation of counsel's office and the serious illness of one of the applicant's principals. Nonetheless, the request was denied.

IV. CONCLUSION

8. For all of the foregoing reasons: PDB's Motion should be denied; the proposed allocation of Channel 282A to Hazlehurst should be denied for want of an acceptable expression of interest in the channel; DeLawder's counter-proposal should be granted forthwith.

Respectfully submitted,

Douglas B. DeLawder

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April 20, 1994

CERTIFICATE OF SERVICE

I, Hazel Y. Goodger secretary in the firm of Harris, Beach & Wilcox, hereby certify that I have, this 20th day of April, 1994, caused copies of the foregoing "Opposition To Motion To Accept Late Filed Comments" to be mailed to the following via first class mail, postage prepaid.

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Hazel Y. Goodger